Michigan Supreme Court
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FOR IMMEDIATE RELEASE

MICHIGAN SUPREME COURT TO HEAR REDISTRICTING, OTHER CASES NEXT WEEK

LANSING, MI, January 18, 2002 – **Congressional redistricting, a Detroit police lieutenant who claims she suffered discrimination because she is a lesbian, and a $5.5 million tax dispute involving General Motors are among the cases the Michigan Supreme Court will consider in oral arguments next week.**

Court will be held **January 23 and 24** in the Supreme Court Room on the second floor of the G. Mennen Williams (a/k/a Law) Building. Court will convene at **9:30 am** each day.

(*Please note: The summaries that follow are brief accounts of complicated cases and might not reflect the way in which some or all of the Court's seven Justices view the cases. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of their cases. For further details about these cases, please contact the attorneys.*)

Wednesday, January 23

GENERAL MOTORS v. DEPARTMENT OF TREASURY, REVENUE DIVISION
Attorneys for General Motors: Alan M. Valade, Frederick M. Baker Jr./517.377.0707
Attorneys for the Department of Treasury: Attorney General Jennifer Granholm, Solicitor General Thomas L. Casey, Assistant Attorney General Steven B. Flancher/517.373.1110
Amicus curiae/attorneys:
Michigan Chamber of Commerce/Robert S. LaBrant/517.371.2100
Michigan Consumer Federation/Thomas E. Brennan/517.371.5140
Ford Motor Company/Samuel J. McKim III, Robert F. Rhodes, Joanne B. Faycurry/313.963.6420
At issue: General Motors and its dealers, under a "Goodwill Adjustments Policy" program, provides free vehicle parts to GM customers after express warranties on the vehicles expire. The Michigan Department of Treasury argues that GM must pay a use tax on the free parts, including millions of dollars in back taxes. GM argues in part that the use tax is really an unconstitutional "double tax" because the cost of the replacement parts is included in the purchase price and is taxed at the time of sale. The Court's decision in this case could have a wide impact, affecting other auto and durable goods manufacturers who have similar programs.

Background: GM sells motor vehicles to dealerships throughout Michigan. Because these sales are not retail sales, they are not subject to the General Sales Tax Act. General Motors does pay a sales tax on each sale by its dealers, based on the "gross proceeds" its dealers receives from customers. Under GM's post-warranty Goodwill Policy Adjustment Program, GM permits its dealers to perform certain repairs after the warranty has expired. GM pays the dealers for their labor as well as the cost of the part.

In 1989, the Michigan Department of Treasury audited GM for the period of 1986-1992. As a result of that audit, the Department of Treasury said GM must pay a use tax on the "goodwill" repairs. In 1997, the Department assessed $5.5 million in use taxes against GM for 1986-1992. GM paid $744,555 under protest, for the use taxes and interest claimed by the Treasury Department for 1990-1992. GM then filed suit in the Court of Claims and in the Michigan Tax Tribunal. In its complaint, GM claimed 1) that the Department lacked statutory authority to impose the use tax; 2) that the Department violated the equal protection and uniformity clauses of the federal and Michigan constitutions because it did not impose the tax on other similarly situated taxpayers; 3) that the Treasury Department violated GM's right to due process because the Department revoked its own earlier rulings regarding the use tax; and 4) that the tax constituted double-taxation in violation of the Commerce Clause of the federal constitution. The fifth count of GM's complaint called for declaratory relief. The Department of Treasury responded in part that the use tax was not a "double tax" on GM because GM is not a party to the initial retail sale, the transaction that generates a sales tax.

Ultimately, the Court of Claims dismissed GM's suit. In an unpublished per curiam opinion dated May 9, 2000, the Court of Appeals affirmed in part and reversed in part. The Court of Appeals said that GM had shown that Ford Motor Company might have been treated differently by the Department of Treasury, so the Court of Claims should not have dismissed the second count of GM's complaint. GM appeals.

MACK v. CITY OF DETROIT

Attorneys for plaintiff Linda Mack: Peter W. Macuga, II, David R. Dubin/313.965.0045
Attorney for the City of Detroit: E. Lynise Bryant-Weekes/313.237.3039
At issue: Does an anti-discrimination provision in the City of Detroit charter give the plaintiff, a lesbian police lieutenant, the ability to sue for discrimination based on sexual orientation? The answer could determine whether local human rights ordinances forbidding discrimination based on sexual orientation create a right to sue. Michigan's state civil rights law, the Elliott-Larsen Act, does not cover discrimination against gays and lesbians.
Background: Linda Mack, a lieutenant with the Detroit Police Department, sued the City of Detroit in Wayne County Circuit Court. Mack claimed that male supervisors discriminated against her for being a woman and a lesbian. She stated that, after she rebuffed male co-workers' advances, they continued to harass her and changed her work assignments. As a result, Mack said, she suffered severe emotional distress, as well as damage to her reputation and career. Mack brought her anti-discrimination claim under a provision of the Detroit Home Rule Charter. A section of the Charter entitled "Declaration of Rights" states that "The City has an affirmative duty to secure the equal protection of the law for each person and to ensure equality of opportunity for all persons. No person shall be denied the enjoyment of civil or political rights or be discriminated against in the exercise thereof because of race, color, creed, national origin, age, handicap, sex, or sexual orientation." The Charter also states that the City's Human Rights

Department has the duty to "[i]nvestigate complaints of unlawful discrimination against any person because of race, color, creed, national origin, age, handicap, sex, or sexual orientation in violation of any ordinance or any law within the city's jurisdiction to enforce, and secure equal protection of civil rights without discrimination." The City moved to dismiss the case, arguing that Mack's intentional infliction of emotional distress claim was barred by governmental immunity. The City also contended that the City Charter only allowed Mack to file a complaint with the Human Rights Department and did not provide for a cause of action in court. Wayne County Circuit Judge John A. Murphy agreed and dismissed the case. In a published decision, decided October 27, 2000, a divided Court of Appeals reversed, finding that the City Charter did create a private cause of action for discrimination based on sexual orientation. The City of Detroit appeals.

WPW ACQUISITIONS v. CITY OF TROY

Attorneys for plaintiff WPW Acquisitions: John D. Pirich, Michael B. Shapiro and John S. Kane/517.377.0712

Attorney for defendant City of Troy: Lori Grigg Bluhm/248.524.3323

Attorney for amicus Michigan Chamber of Commerce: Robert S. LaBrant/517.371.2100

Attorney for amicus Michigan Insurance Federation: Eric J. Henning/517.371.2880

Attorney for amicus National Association of Real Estate Investment Trusts: Carl W. Herstein/313.465.7440

At issue: Should real property's taxable value go up based on increased occupancy? This dispute, which concerns a 1994 amendment to the Michigan Constitution, could affect commercial real estate throughout Michigan.

Background: The Michigan Constitution addresses taxation of real property. Before 1994, Const 1963, art 9, § 3, the property taxation clause, placed no limit on annual increases in the taxable value of real estate and said nothing about adjusting the taxable value for "additions and losses" before it was compared with the previous year. In 1994, Michigan voters ratified Proposal A, an amendment to the Michigan Constitution. Proposal A amended the Constitution to state that the taxable value of each parcel could not be increased from the previous year by more than the corresponding increase in the general price level or 5%, whichever was less. The amendment also stated, for the first time, that the taxable value of real property could be "adjusted for additions and losses." "Additions" and "losses" were defined in the General Property Tax Act. When Proposal A was ratified, "additions" were limited to "increases in value caused by new construction or a physical addition of equipment or furnishings," and the inclusion of previously tax-exempt property. After Proposal A took effect, the Legislature amended the definition of "additions." That amendment (MCL 211.34d(1)(b)) stated that "additions" include "[a]n increase in the value attributable to the property's occupancy rate if either a loss, as that term is defined in this section, had been previously allowed because of a decrease in the property's occupancy rate or if the value of new construction was reduced because of a below-market occupancy rate . . . ."

In 1991, WPW Acquisition Company, which owns an office building in the City of Troy, requested a reduction in the taxable value of the building, based in part on a decrease in occupancy. In response to the request, the City's assessor reduced the taxable value of the building by 23 percent. Over the next several years, however, the demand for office space in Troy increased, and the occupancy in WPW's building grew. In 1996, the City of Troy's assessor increased the taxable value of WPW's building by approximately 14 percent. WPW challenged

the assessment, objecting that it far exceeded the constitutional limitation of 2.8%, which was the increase in the general price level that had occurred in 1995. The City responded that it was entitled to adjust the taxable value of the building for the "addition" of increased occupancy without having that factor included in the comparison with the previous year's taxable value. WPW responded that the City was bound by the statutory definition of "additions" that was in force when the 1994 Proposal A amendment to the Constitution took effect. That definition did not permit an adjustment of taxable value to reflect an increase in occupancy, WPW argued.

The dispute went to the Michigan Tax Tribunal, which ruled in favor of the City. WPW then sued in Oakland Circuit Court, asking that MCL 211.34d(1)(b), the post-Proposal A amendment to the statutory definition of "additions," be declared unconstitutional and that the City be compelled to pay a partial refund of the 1996 property taxes paid by WPW for its office building in Troy. Oakland County Circuit Judge Joan E. Young ruled in favor of WPW. In a November 14, 2000 opinion, the Court of Appeals reversed. The Court of Appeals held that MCL 211.34d(1)(b) as amended is not unconstitutional because it reflects the broad use and plain meaning of the term "additions" in the Constitution. WPW appeals. In addition, the Michigan Chamber of Commerce, the Michigan Insurance Federation, and the National Association of Real Estate Investment Trusts have filed briefs in the case as amicus curiae.

LEROUX v. SECRETARY OF STATE

Attorneys for plaintiffs David Leroux, Michael Gray, and Robert L. Ellis: F. Thomas Lewand, R. Craig Hupp, William B. Forrest III/313.393.7573

Attorneys for defendants Secretary of State and Director of Elections: Attorney General Jennifer M. Granholm, Solicitor General Thomas L. Casey, Assistant Attorney General Gary P. Gordon, Assistant Attorney General Katherine C. Galvin

Attorneys for intervening parties Suzanne Anderson, SharonYentsch, Bradley Van Huitsma: Peter H. Ellsworth, Jeffrey V. Stuckey, Susan G. Schwochau/517.371.1730; Michael A. Carvin, and Louis K. Fisher/202.879.7643

At issue: The redistricting of Michigan's 15 seats in the U.S. House of Representatives.

Background: On September 11, 2001, Governor John Engler signed 2001 PA 115, providing for the redistricting of Michigan's fifteen seats in the U.S. House of Representatives. The plaintiffs, who are described in the complaint as voters from Bay and Calhoun counties, brought their suit before the Michigan Supreme Court on November 6, 2001. The named defendants are the Secretary of State and the Director of Elections.

Under Public Act 222 of 1999, the Michigan Supreme Court has "original and exclusive state jurisdiction" over state claims regarding congressional redistricting. The statute allows any voter to bring suit challenging a redistricting plan.

A companion statute, 1999 PA 221, sets out standards for drawing congressional districts The plaintiffs argue that those standards apply to the redistricting plan. One of the criteria for drawing districts directs that "Congressional district lines shall break as few county boundaries as is reasonably possible." The plaintiffs claim that the plan violates that provision and that the plan confers an advantage on Republican candidates. The plaintiffs ask that the Michigan Supreme Court come up with its own redistricting plan.

A federal lawsuit challenging the redistricting plan was also filed in the Eastern District of Michigan (Case No. 01-72584). Judge Boyce Martin, Chief Judge of the U.S. Court of Appeals for the Sixth Circuit, and Eastern District Judges Julian Abele Cook and David M.

Lawson have been assigned to that case. The plaintiffs in the federal suit ask the federal court to act if the Michigan Supreme Court fails to adopt a valid congressional redistricting plan by the April 1, 2002.

Thursday, January 24

STANTON v. CITY OF BATTLE CREEK
Attorneys for plaintiffs Michael and Joy Stanton: Mark Granzotto/313.964.4720, Harold Schuitmaker/616.657.3177
Attorney for City of Battle Creek: Clyde J. Robinson/616.966.3385
At issue: Is a forklift a "motor vehicle" for the purposes of Michigan's governmental immunity statute? While the statute bars most suits against governmental entities, it does allow suits for injuries caused by the "negligent operation" of a governmental-owned motor vehicle by a government employee. The answer will determine whether the plaintiff – who was injured by a city-owned forklift – can sue for his injuries.
Background: Plaintiff Michael Stanton, then a truck driver for Hover Trucking Company, was hit by a forklift and injured on April 28, 1995. The forklift was driven by an employee of the City of Battle Creek and was owned by the City. Stanton and his wife Joy sued the City and the employee who drove the forklift. The plaintiffs asserted that the City was negligent in maintaining and operating the forklift, and that the forklift driver was also negligent or grossly negligent. Calhoun County Circuit Judge Allen L. Garbrecht dismissed the case, finding that governmental immunity shielded both the city and the forklift driver from being sued. The Court of Appeals affirmed Judge Garbrecht's ruling in a published opinion dated August 31, 1999. Stanton appeals.

Stanton argues that his case falls under the motor vehicle exception to Michigan's governmental immunity statute. The statute provides that "[g]overnmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation of any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner." A separate statute, found in the Michigan Vehicle Code (MVC), states that forklifts are not "motor vehicles" as that term is used in a specific MVC statute that does not involve governmental immunity. Stanton argues that the MVC definition was never intended to apply to the governmental immunity statute.

ARCHAMBO v. LAWYERS TITLE INSURANCE
Attorney for plaintiff Clarence G. Archambo III: Timothy P. MacArthur/616.627.3163
Attorney for defendant Lawyers Title Insurance: Richard A. Smith/231.627.5090
At issue: When the plaintiff bought back property he had owned five years earlier, he did not reveal that there was a tax lien on the property. The title commitment document, which served as an application for title insurance, provided that there would be no coverage if there were any undisclosed liens on the property, whether or not they were recorded. By contrast, the title insurance policy itself stated that there would be coverage for known liens if the liens were recorded. Which document controls the dispute? The answer will determine whether the title insurance company has to reimburse the plaintiff for payments he made to settle the lien and clear the title.

Background: In 1992, Clarence J. Archambo III bought back property he had sold in 1987. While there was a tax lien of $100,000 on the property prior to 1987, Archambo said he believed the lien had dropped off by the time he bought it back in 1992. First of America Bank financed the 1992 purchase, and asked for title insurance for its mortgage protection. Lawyers Title Insurance provided the title commitment, which also served as an application for owner's protection insurance for Archambo. The title commitment document stated that coverage was conditioned on there not being any undisclosed liens on the property, whether recorded or not. The commitment document also provided that the failure to disclose liens would invalidate the commitment and title insurance policy. When the policy was issued, it stated that there was no coverage for liens that were known to Archambo but not recorded. The policy further stated that the policy itself was the complete contract between the parties. An initial search of records did not turn up the tax lien because the bank had given the plaintiff's name as Clarence Archambo rather than Clarence G. Archambo, III. When another record check was made with the right name, Lawyers Title Insurance did not search all the way back in the deed records, but started from March 1992, when it committed to provide title insurance. When Archambo sold the property in October 1993, the tax lien showed up. Archambo had to borrow more than $19,000 to settle with the IRS in order to clear the title to the property. He eventually sued Lawyers Title to recover the money he spent to clear title. Cheboygan Circuit Judge Robert C. Livo ruled in favor of Archambo, stating that the policy, not the title commitment, governed the dispute. Because the lien was recorded, the insurance company could not deny coverage, the judge found. Ultimately, a 2-1 majority of a Court of Appeals panel stated that the policy never took effect because Archambo did not disclose the lien, as required by the title commitment. Archambo appeals.

PEOPLE v. RANDOLPH
Attorney for defendant Kalvin Randolph: Gary L. Rogers/313.256.9833
Prosecuting attorneys: Timothy A. Baughman, Carolyn M. Breen/313.224.5792
At issue: The defendant, who took items from a store without paying, resisted security guards who tried to stop him after he left the store. In the struggle, one of the guards suffered a facial fracture and broken teeth. Was the defendant properly convicted of unarmed robbery? The defendant argues that his conviction should be overturned, because he did not use force in stealing the items, and force or violence are elements of the unarmed robbery offense. The prosecution argues that the defendant's attempt to fight off store security supplies the element of force.
Background: The defendant, Kalvin Randolph, left a Meijer store in Taylor with a cordless drill and thermostat hidden in his jacket. He was followed by two security guards. As Randolph tried to run away, one of the guards grabbed his arm. A struggle ensued, with Randolph taking hold of one of the guards and pulling her under him as he fell to the ground. Others arrived and handcuffed Randolph, who continued to resist. Although Randolph was asked to let the guard up, he did not, and she was pinned to the ground for several minutes. The guard suffered facial abrasions, a facial fracture, and two broken teeth. In a trial in Wayne County Circuit before Judge Sean Cox, Randolph was convicted of unarmed robbery. The Court of Appeals reversed, stating that there was insufficient evidence to support a showing of force or violence, an essential element of the unarmed robbery offense. A struggle to escape may be enough to supply the element of force if the defendant successfully escapes by using force, the appellate panel said. However, because Randolph did not escape, there was not enough evidence of force to support

the unarmed robbery conviction, the Court of Appeals stated. The prosecution appeals, arguing that it does not matter that Randolph's attempts to escape failed. According to the prosecution, Randolph's actions show that he was fighting to keep the items he had taken from the store, not just to escape. Because Randolph's struggle was part of the effort to steal the items, his actions satisfy the element of force, the prosecution contends.

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